



Rep. Randy Ramey, Jr.

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1 AMENDMENT TO HOUSE BILL 1032

2 AMENDMENT NO. _____. Amend House Bill 1032, AS AMENDED, by
3 replacing the title with the following:

4 "AN ACT concerning civil law."; and

5 by inserting immediately after Sec. 22 of Section 5-915 the
6 following:

7 "ARTICLE 10. PRODUCT LIABILITY

8 Section 10-1. Purpose.

9 (a) The General Assembly finds and declares that:

10 (1) "An Act to amend certain Acts in relation to civil
11 actions, which may be referred to as the Civil Justice
12 Reform Amendments of 1995", Public Act 89-7, approved March
13 9, 1995, added Part 21 to Article II of the Code of Civil
14 Procedure. Public Act 89-7 also contained other
15 provisions.

1 (735 ILCS 5/2-2101)

2 Sec. 2-2101. Definitions. For purposes of this Part, the
3 terms listed have the following meanings:

4 "Clear and convincing evidence" means that measure or
5 degree of proof that will produce in the mind of the trier of
6 fact a high degree of certainty as to the truth of the
7 allegations sought to be established. This evidence requires a
8 greater degree of persuasion than is necessary to meet the
9 preponderance of the evidence standard.

10 "Harm" means (i) damage to property other than the product
11 itself; (ii) personal physical injury, illness, or death; (iii)
12 mental anguish or emotional harm to the extent recognized by
13 applicable law; (iv) any loss of consortium or services; or (v)
14 other loss deriving from any type of harm described in item
15 (i), (ii), (iii), or (iv).

16 "Manufacturer" means (i) any person who is engaged in a
17 business to design or formulate and to produce, create, make,
18 or construct any product or component part of a product; (ii) a
19 product seller with respect to all component parts of a product
20 or a component part of a product that is created or affected
21 when, before placing the product in the stream of commerce, the
22 product seller designs or formulates and produces, creates,
23 makes, or constructs an aspect of a product or a component part
24 of a product made by another; or (iii) any product seller not
25 described in (ii) that holds itself out as a manufacturer to

1 the user of the product.

2 "Product liability action" means a civil action brought on
3 any theory against a manufacturer or product seller for harm
4 caused by a product.

5 "Product seller" means a person who, in the course of a
6 business conducted for that purpose, sells, distributes,
7 leases, installs, prepares, blends, packages, labels, markets,
8 repairs, maintains, or otherwise is involved in placing a
9 product in the stream of commerce.

10 (Source: P.A. 89-7, eff. 3-9-95.)

11 (735 ILCS 5/2-2102)

12 Sec. 2-2102. Effect on other laws. Except as may be
13 provided by other laws, any civil action that conforms to the
14 definition of a product liability action as defined in Section
15 2-2101 of this Part shall be governed by the provisions of this
16 Part.

17 (Source: P.A. 89-7, eff. 3-9-95.)

18 (735 ILCS 5/2-2103)

19 Sec. 2-2103. Federal and State standards; presumption. In a
20 product liability action, a product or product component shall
21 be presumed to be reasonably safe if the aspect of the product
22 or product component that allegedly caused the harm was
23 specified or required, or if the aspect is specifically
24 exempted for particular applications or users, by a federal or

1 State statute or regulation promulgated by an agency of the
2 federal or State government responsible for the safety or use
3 of the product before the product was distributed into the
4 stream of commerce.

5 (Source: P.A. 89-7, eff. 3-9-95.)

6 (735 ILCS 5/2-2104)

7 Sec. 2-2104. No practical and feasible alternative design;
8 presumption. If the design of a product or product component
9 is in issue in a product liability action, the design shall be
10 presumed to be reasonably safe unless, at the time the product
11 left the control of the manufacturer, a practical and
12 technically feasible alternative design was available that
13 would have prevented the harm without significantly impairing
14 the usefulness, desirability, or marketability of the product.
15 An alternative design is practical and feasible if the
16 technical, medical, or scientific knowledge relating to safety
17 of the alternative design was, at the time the product left the
18 control of the manufacturer, available and developed for
19 commercial use and acceptable in the marketplace.

20 (Source: P.A. 89-7, eff. 3-9-95.)

21 (735 ILCS 5/2-2105)

22 Sec. 2-2105. Changes in design or warning;
23 inadmissibility. When measures are taken which, if taken
24 previously, would have made an event less likely to occur,

1 evidence of the subsequent measures is not admissible to prove
2 a defect in a product, negligence, or culpable conduct in
3 connection with the event. In a product liability action
4 brought under any theory or doctrine, if the feasibility of a
5 design change or change in warnings is not controverted, then a
6 subsequent design change or change in warnings shall not be
7 admissible into evidence. This rule does not require the
8 exclusion of evidence of subsequent measures when offered for
9 another purpose such as proving ownership, control, or
10 impeachment.

11 (Source: P.A. 89-7, eff. 3-9-95.)

12 (735 ILCS 5/2-2106)

13 Sec. 2-2106. Provision of written warnings to users of
14 product; nonliability.

15 (a) The warning, instructing, or labeling of a product or
16 specific product component shall be deemed to be adequate if
17 pamphlets, booklets, labels, or other written warnings were
18 provided that gave adequate notice to reasonably anticipated
19 users or knowledgeable intermediaries of the material risks of
20 injury, death, or property damage connected with the reasonably
21 anticipated use of the product and instructions as to the
22 reasonably anticipated uses, applications, or limitations of
23 the product anticipated by the defendant.

24 (b) In the defense of a product liability action, warnings,
25 instructions or labeling shall be deemed to be adequate if the

1 warnings, instructions or labels furnished with the product
2 were in conformity with the generally recognized standards in
3 the industry at the time the product was distributed into the
4 stream of commerce.

5 (c) Notwithstanding subsections (a) and (b), a defendant
6 shall not be liable for failure to warn of material risks that
7 were obvious to a reasonably prudent product user and material
8 risks that were a matter of common knowledge to persons in the
9 same position as or similar positions to that of the plaintiff
10 in a product liability action.

11 (d) In any product liability action brought against a
12 manufacturer or product seller for harm allegedly caused by a
13 failure to provide adequate warnings or instructions, a
14 defendant manufacturer or product seller shall not be liable
15 if, at the time the product left the control of the
16 manufacturer, the knowledge of the danger that caused the harm
17 was not reasonably available or obtainable in light of existing
18 scientific, technical, or medical information.

19 (Source: P.A. 89-7, eff. 3-9-95.)

20 (735 ILCS 5/2-2106.5)

21 Sec. 2-2106.5. Inherent characteristics of products;
22 nonliability. In a product liability action, a manufacturer or
23 product seller shall not be liable for harm allegedly caused by
24 a product if the alleged harm was caused by an inherent
25 characteristic of the product which is a generic aspect of the

1 product that cannot be eliminated without substantially
2 compromising the product's usefulness or desirability and
3 which is recognized by the ordinary person with the ordinary
4 knowledge common to the community.

5 (Source: P.A. 89-7, eff. 3-9-95.)

6 (735 ILCS 5/2-2107)

7 Sec. 2-2107. Punitive damages. In a product liability
8 action, punitive damages shall not be awarded against a
9 manufacturer or product seller if the conduct of the defendant
10 manufacturer, seller, or reseller that allegedly caused the
11 harm was approved by or was in compliance with standards set
12 forth in an applicable federal or State statute or in a
13 regulation or other administrative action promulgated by an
14 agency of the federal or State government responsible for the
15 safety or use of the product, which statute or regulation was
16 in effect at the time of the manufacturer's or product seller's
17 alleged misconduct, unless the plaintiff proves by clear and
18 convincing evidence that the manufacturer or product seller
19 intentionally withheld from or misrepresented to Congress, the
20 State legislature, or the relevant federal or State agency
21 material information relative to the safety or use of the
22 product that would or could have resulted in a changed decision
23 relative to the law, standard, or other administrative action.

24 (Source: P.A. 89-7, eff. 3-9-95.)

1 (735 ILCS 5/2-2108)

2 Sec. 2-2108. No cause of action created. Nothing in this
3 Part shall be construed to create a cause of action.

4 (Source: P.A. 89-7, eff. 3-9-95.)

5 (735 ILCS 5/2-2109)

6 Sec. 2-2109. This amendatory Act of the 97th General
7 Assembly 1995 ~~adding Part 21 to the Code of Civil Procedure~~
8 applies to causes of action accruing on or after its effective
9 date.

10 (Source: P.A. 89-7, eff. 3-9-95.)

11 ARTICLE 15. VENUE

12 Section 15-5. The Code of Civil Procedure is amended by
13 changing Sections 2-101, 2-102, 2-103, and 2-104 as follows:

14 (735 ILCS 5/2-101) (from Ch. 110, par. 2-101)

15 Sec. 2-101. Generally. Except as otherwise provided in this
16 Act, every action must be commenced (1) in the county of
17 residence of any defendant who is joined in good faith and with
18 probable cause for the purpose of obtaining a judgment against
19 him or her and not solely for the purpose of fixing venue in
20 that county, or (2) in the county in which the transaction or
21 some part thereof occurred out of which the cause of action
22 arose.

23 If a check, draft, money order, or other instrument for the

1 payment of child support payable to or delivered to the State
2 Disbursement Unit established under Section 10-26 of the
3 Illinois Public Aid Code is returned by the bank or depository
4 for any reason, venue for the enforcement of any criminal
5 proceedings or civil cause of action for recovery and attorney
6 fees shall be in the county where the principal office of the
7 State Disbursement Unit is located.

8 If no ~~all~~ defendants that are joined in good faith and with
9 probable cause for the purpose of obtaining a judgment against
10 them are residents ~~nonresidents~~ of the State, an action may be
11 commenced only in the county in which the transaction or some
12 part thereof occurred out of which the cause of action arose
13 any county.

14 If the corporate limits of a city, village or town extend
15 into more than one county, then the venue of an action or
16 proceeding instituted by that municipality to enforce any fine,
17 imprisonment, penalty or forfeiture for violation of any
18 ordinance of that municipality, regardless of the county in
19 which the violation was committed or occurred, may be in the
20 appropriate court (i) in the county wherein the office of the
21 clerk of the municipality is located or (ii) in any county in
22 which at least 35% of the territory within the municipality's
23 corporate limits is located.

24 The changes made by this amendatory Act of the 97th General
25 Assembly apply to actions filed on or after its effective date.

26 (Source: P.A. 91-212, eff. 7-20-99.)

1 (735 ILCS 5/2-102) (from Ch. 110, par. 2-102)

2 Sec. 2-102. Residence of corporations, voluntary
3 unincorporated associations and partnerships defined. For
4 purposes of venue, the following definitions apply:

5 (a) Any private corporation or railroad or bridge company,
6 organized under the laws of this State, and any foreign
7 corporation authorized to transact business in this State is a
8 resident of any county in which it has its registered office or
9 other office ~~or is doing business~~. A foreign corporation not
10 authorized to transact business in this State is a nonresident
11 of this State.

12 (b) A partnership sued in its firm name is a resident of
13 any county ~~in which any partner resides or~~ in which the
14 partnership has an office ~~or is doing business~~. A partnership
15 sued in its firm name, of which all partners are nonresidents
16 of this State and which does not have an office or do business
17 in this State, is a nonresident of this State.

18 (c) A voluntary unincorporated association sued in its own
19 name is a resident of any county in which the association has
20 an office ~~or, if on due inquiry no office can be found, in~~
21 ~~which any officer of the association resides~~. A voluntary
22 unincorporated association sued in its own name, of which all
23 its members are nonresidents of this State and which does not
24 have an office or do business in this State, is a nonresident
25 of this State.

1 (d) The changes made by this amendatory Act of the 97th
2 General Assembly apply to actions filed on or after its
3 effective date.

4 (Source: P.A. 83-901.)

5 (735 ILCS 5/2-103) (from Ch. 110, par. 2-103)

6 Sec. 2-103. Public corporations - Local actions - Libel -
7 ~~Insurance companies.~~

8 (a) Actions must be brought against a public, municipal,
9 governmental or quasi-municipal corporation in the county in
10 which its principal office is located or in the county in which
11 the transaction or some part thereof occurred out of which the
12 cause of action arose. Except as otherwise provided in Section
13 7-102 of this Code, if the cause of action is related to an
14 airport owned by a unit of local government or the property or
15 aircraft operations thereof, however, including an action
16 challenging the constitutionality of this amendatory Act of the
17 93rd General Assembly, the action must be brought in the county
18 in which the unit of local government's principal office is
19 located. Actions to recover damage to real estate which may be
20 overflowed or otherwise damaged by reason of any act of the
21 corporation may be brought in the county where the real estate
22 or some part of it is situated, or in the county where the
23 corporation is located, at the option of the party claiming to
24 be injured. Except as otherwise provided in Section 7-102 of
25 this Code, any cause of action that is related to an airport

1 owned by a unit of local government, and that is pending on or
2 after the effective date of this amendatory Act of the 93rd
3 General Assembly in a county other than the county in which the
4 unit of local government's principal office is located, shall
5 be transferred, upon motion of any party under Section 2-106 of
6 this Code, to the county in which the unit of local
7 government's principal office is located.

8 (b) Any action to quiet title to real estate, or to
9 partition or recover possession thereof or to foreclose a
10 mortgage or other lien thereon, must be brought in the county
11 in which the real estate or some part of it is situated.

12 (c) Any action which is made local by any statute must be
13 brought in the county designated in the statute.

14 (d) Every action against any owner, publisher, editor,
15 author or printer of a newspaper or magazine of general
16 circulation for libel contained in that newspaper or magazine
17 may be commenced only in the county in which the defendant
18 resides or has his, her or its principal office or in which the
19 article was composed or printed, except when the defendant
20 resides or the article was printed without this State, in
21 either of which cases the action may be commenced in any county
22 in which the libel was circulated or published.

23 (e) (Blank). ~~Actions against any insurance company~~
24 ~~incorporated under the law of this State or doing business in~~
25 ~~this State may also be brought in any county in which the~~
26 ~~plaintiff or one of the plaintiffs may reside.~~

1 (f) The changes made by this amendatory Act of the 97th
2 General Assembly apply to actions filed on or after its
3 effective date.

4 (Source: P.A. 93-450, eff. 8-6-03.)

5 (735 ILCS 5/2-104) (from Ch. 110, par. 2-104)

6 Sec. 2-104. Wrong venue - Waiver - Motion to transfer. (a)
7 No order or judgment is void because rendered in the wrong
8 venue, except in case of judgment by confession as provided in
9 subsection (c) of Section 2-1301 of this Act. No action shall
10 abate or be dismissed because commenced in the wrong venue if
11 there is a proper venue to which the cause may be transferred.
12 If no defendants are residents of this State, and the
13 transaction, or some part thereof, out of which the cause of
14 action arose did not occur in this State, the action must be
15 dismissed for lack of proper venue.

16 (b) All objections of improper venue are waived by a
17 defendant unless a motion to transfer to a proper venue or a
18 motion to dismiss for lack of proper venue is made by the
19 defendant on or before the date upon which he or she is
20 required to appear or within any further time that may be
21 granted him or her to answer or move with respect to the
22 complaint, except that if a defendant upon whose residence
23 venue depends is dismissed upon motion of plaintiff, a
24 remaining defendant may promptly move for transfer as though
25 the dismissed defendant had not been a party.

1 (c) Motions to dismiss or for transfer to a proper venue
2 may be supported and opposed by affidavit. In determining
3 issues of fact raised by affidavits, any competent evidence
4 adduced by the parties shall also be considered. The
5 determination of any issue of fact in connection with a motion
6 to transfer does not constitute a determination of the merits
7 of the case or any aspect thereof.

8 (d) The changes made by this amendatory Act of the 97th
9 General Assembly apply to actions filed on or after its
10 effective date.

11 (Source: P.A. 83-707.)

12 ARTICLE 20. EXPERT WITNESSES

13 Section 20-5. The Code of Civil Procedure is amended by
14 adding Part 29 to Article VIII as follows:

15 (735 ILCS 5/Art. VIII Pt. 29 heading new)

16 Part 29. Reliability in Expert Testimony Standards

17 (735 ILCS 5/8-2901 new)

18 Sec. 8-2901. Opinion testimony by lay witnesses. If the
19 witness is not testifying as an expert, the witness' testimony
20 in the form of opinions or inferences is limited to those
21 opinions or inferences which are (a) rationally based on the
22 perception of the witness, (b) helpful to a clear understanding

1 of the witness' testimony or the determination of a fact in
2 issue, and (c) not based on scientific, technical, or other
3 specialized knowledge within the scope of Section 8-2903.

4 (735 ILCS 5/8-2902 new)

5 Sec. 8-2902. Testimony by experts. If scientific,
6 technical, or other specialized knowledge will assist the trier
7 of fact to understand the evidence or to determine a fact in
8 issue, a witness qualified as an expert by knowledge, skill,
9 experience, training, or education may testify thereto in the
10 form of an opinion or otherwise, if (a) the testimony is based
11 upon sufficient facts or data, (b) the testimony is the product
12 of reliable principles and methods, and (c) the witness has
13 applied the principles and methods reliably to the facts of the
14 case.

15 (735 ILCS 5/8-2903 new)

16 Sec. 8-2903. Bases of expert opinion testimony. The facts
17 or data in the particular case upon which an expert bases an
18 opinion or inference may be those perceived by or made known to
19 the expert at or before the hearing. If of a type reasonably
20 relied upon by experts in the particular field in forming
21 opinions or inferences upon the subject, the facts or data need
22 not be admissible in evidence in order for the opinion or
23 inference to be admitted. Facts or data that are otherwise
24 inadmissible shall not be disclosed to the jury by the

1 proponent of the opinion or inference unless the court
2 determines that their probative value in assisting the jury to
3 evaluate the expert's opinion substantially outweighs their
4 prejudicial effect.

5 (735 ILCS 5/8-2904 new)

6 Sec. 8-2904. Bars to expert testimony.

7 (a) A witness qualified as an expert by knowledge, skill,
8 experience, training, or education may only offer expert
9 testimony with respect to a particular field in which the
10 expert is qualified.

11 (b) An expert witness may receive a reasonable and
12 customary fee for the rendering of professional services,
13 provided that the testimony of an expert witness shall not be
14 admitted if any such compensation is contingent on the outcome
15 of any claim or case with respect to which the testimony is
16 being offered.

17 (735 ILCS 5/8-2905 new)

18 Sec. 8-2905. Mandatory pre-trial hearing. If the witness is
19 testifying as an expert, then upon motion of a party, the court
20 shall hold a pre-trial hearing to determine whether the witness
21 qualifies as an expert and whether the expert's testimony
22 satisfies the requirements of Sections 8-2902, 8-2903, and
23 8-2904. The court shall allow sufficient time for a hearing and
24 shall rule on the qualifications of the witness to testify as

1 an expert and whether or not the testimony satisfies the
2 requirements of Sections 8-2902, 8-2903, and 8-2904. Such
3 hearing and ruling shall be completed no later than the final
4 pre-trial hearing. The trial court's ruling shall set forth the
5 findings of fact and conclusions of law upon which the order to
6 admit or exclude expert evidence is based.

7 (735 ILCS 5/8-2906 new)

8 Sec. 8-2906. Mandatory pre-trial disclosure of expert
9 testimony.

10 (a) Whether or not any party elects to request a pre-trial
11 hearing contemplated in Section 8-2905, all parties shall
12 disclose to other parties the identity of any person who may be
13 used at trial to present expert evidence.

14 (b) Except as otherwise stipulated or directed by the
15 court, this disclosure shall, with respect to a witness who is
16 retained or specially employed to provide expert testimony in
17 the case or whose duties as an employee of the party regularly
18 involve giving expert testimony, be accompanied by a written
19 report prepared and signed by the witness. The report shall
20 contain a complete statement of all opinions to be expressed
21 and the basis and reasons therefor; the data or other
22 information considered by the witness in forming the opinions;
23 any exhibits to be used as a summary of or support for the
24 opinions; the qualifications of the witness, including a list
25 of all publications authored by the witness within the

1 preceding 10 years; the compensation to be paid for the study
2 and testimony; and a listing of any other cases in which the
3 witness has testified as an expert at trial or by deposition
4 within the preceding 4 years.

5 (c) These disclosures shall be made at the times and in the
6 sequence directed by the court. In the absence of other
7 directions from the court or stipulation by the parties, the
8 disclosures shall be made at least 90 days before the trial
9 date or the date the case is to be ready for trial or, if the
10 evidence is intended solely to contradict or rebut evidence on
11 the same subject matter identified by another party under
12 paragraph (b), within 30 days after the disclosure made by the
13 other party.

14 (d) A party may depose any person who has been identified
15 as an expert whose opinions may be presented at trial. If a
16 report from the expert is required under paragraph (b), the
17 deposition shall not be conducted until after the report is
18 provided.

19 (735 ILCS 5/8-2907 new)

20 Sec. 8-2907. Interpretation. In interpreting and applying
21 this Act, the courts of this State shall follow the opinions of
22 the Supreme Court of the United States in Daubert v. Merrell
23 Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), General
24 Electric Co. v. Joiner, 522 U.S. 136 (1997), Kumho Tire Co.
25 Ltd. v. Carmichael, 526 U.S. 137 (1999), Weisgram v. Marley,

1 528 U.S. 440 (2000), and their progeny; moreover, the courts of
2 this State may draw from other precedents binding in the
3 federal courts of this State applying the standards announced
4 by the Supreme Court of the United States in the foregoing
5 cases.

6 (735 ILCS 5/8-2908 new)

7 Sec. 8-2908. Interlocutory appeal. Interlocutory appeal of
8 a ruling on the admissibility of expert evidence shall be
9 available at the discretion of the appellate court. In deciding
10 whether to grant the interlocutory appeal, the court shall
11 consider whether: (i) the ruling involved any challenge to the
12 constitutionality of this Act; (ii) the ruling will help prove
13 or disprove criminal liability; or (iii) the ruling will help
14 establish civil liability at or above \$75,000, where the
15 testimony could be outcome-determinative for establishing
16 liability or determining damages. Neither a party's failure to
17 seek interlocutory appeal nor an appellate court's decision to
18 deny a motion for interlocutory appeal shall waive a party's
19 right to appeal a ruling on the admissibility of expert
20 evidence after an entry of judgment in the case.

21 (735 ILCS 5/8-2909 new)

22 Sec. 8-2909. Standard of review.

23 (a) As the proper construction of the expert evidence
24 admissibility framework prescribed by this Act is a question of

1 law, the reviewing court shall apply a de novo standard of
2 review in determining whether the trial court fully applied the
3 proper legal standard in considering the admissibility of
4 expert evidence.

5 (b) As the application of this Act to determine the
6 admissibility of expert testimony is a question of fact, the
7 reviewing court shall apply an abuse of discretion standard in
8 determining whether the trial court properly admitted or
9 excluded particular expert evidence.

10 (735 ILCS 5/8-2910 new)

11 Sec. 8-2910. Application. This Part applies to all actions
12 commenced on or after the effective date of this amendatory Act
13 of the 97th General Assembly and to all pending actions in
14 which trial has not been scheduled or in which trial has been
15 scheduled in excess of 90 days after the effective date of this
16 amendatory Act of the 97th General Assembly.

17 ARTICLE 25. JOINT AND SEVERAL LIABILITY

18 Section 25-5. The Code of Civil Procedure is amended by
19 changing Section 2-1117 as follows:

20 (735 ILCS 5/2-1117) (from Ch. 110, par. 2-1117)

21 Sec. 2-1117. Joint liability. Except as provided in Section
22 2-1118, in actions on account of bodily injury or death or

1 physical damage to property, based on negligence, or product
2 liability based on strict tort liability, all defendants found
3 liable are jointly and severally liable for plaintiff's past
4 and future medical and medically related expenses. Any
5 defendant whose fault, as determined by the trier of fact, is
6 less than 25% of the total fault attributable to the plaintiff,
7 the defendants sued by the plaintiff, and any third party
8 defendant who could have been sued by the plaintiff ~~except the~~
9 ~~plaintiff's employer~~, shall be severally liable for all other
10 damages. Any defendant whose fault, as determined by the trier
11 of fact, is 25% or greater of the total fault attributable to
12 the plaintiff, the defendants sued by the plaintiff, and any
13 third party defendants who could have been sued by the
14 plaintiff ~~except the plaintiff's employer~~, shall be jointly and
15 severally liable for all other damages.

16 (Source: P.A. 93-10, eff. 6-4-03; 93-12, eff. 6-4-03.)".